

August 30, 2012

James R. Sutton
The Sutton Law Firm
150 Post Street, Suite 405
San Francisco, CA 94108

Re: Your Request for Informal Assistance
Our File No. I-12-097

Dear Mr. Sutton:

This letter responds to your request for informal advice regarding campaign provisions of the Political Reform Act (the “Act”).¹

QUESTION

May local jurisdictions impose reporting requirements only on general purpose PACs which make 100 percent of their contributions and independent expenditures in that jurisdiction or do local reporting requirements apply to general purpose PACs that meet the definition of “city” or “county” general purpose committee under Regulation 18227.5?

CONCLUSION

Based on where a committee conducts its political activity, Section 82027.5 and Regulation 18227.5 define when a general purpose committee is considered a “state,” “county,” or “city” committee. The statutory and regulatory definitions of “general purpose committee” under the Act are applicable both for purposes of Section 84215, which sets forth where a state, county or city committee files campaign reports, and for purposes of Section 81009.5, concerning the authority of local jurisdictions to impose additional filing requirements on committees active only in their jurisdiction. Accordingly, it is our interpretation that a city or

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated. Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

county's campaign rules do apply to a general purpose committee that meets the definition of a "city" or "county" committee.

The old standards you seek to rely on from the *Moll* Advice Letter, No. A-97-080, to determine when a general purpose committee is a state, county or city committee, and whether a committee is primarily formed, were guidelines that proved unworkable and have been superseded by the Commission's adoption of regulations defining the terms "general purpose committee" and "primarily formed committee." (See Regulations 18227.5 and 18247.5.) The interpretation you propose would permit a general purpose committee that meets the definition of "city" or "county" committee to evade the city or county's campaign ordinance.

FACTS

Your law firm represents general purpose recipient committees ("PACs") throughout the state which make contributions and independent expenditures in elections in cities, counties, school districts, and special districts, as well as at the state level. You are often asked for advice regarding laws enacted by local jurisdictions which impose reporting requirements different from and in addition to the reporting requirements found in the Act.

For example, San Francisco law contains a provision which requires all PACs to file special reports on forms promulgated by the San Francisco Ethics Commission when they spend \$5,000 or more on independent expenditures supporting or opposing San Francisco candidates. These reports are in addition to the independent expenditure reports required by the Act (Forms 465, 495 and 496). (S.F. Camp. & Govt. Conduct Code sections 1.134(c) and 1.152.)

Additionally, San Jose recently added a provision to its campaign law requiring all PACs to file 24-hour reports when they receive contributions of \$250 or more during the 16 days preceding a city election, even though state law does not require general purpose recipient committees to file 24-hour reports based on contributions they receive. (S.J. Muni. Code section 12.06.140.)

A final example: Contra Costa County law requires state and local PACs which make an independent expenditure relating to a county candidate to file a third pre-election report, in addition to the two pre-election reports required by the Act. (Contra Costa County Code section 530-2.802(c).)

You ask whether local jurisdictions may impose reporting requirements only on general purpose PACs which make 100 percent or close to 100 percent of their contributions and independent expenditures in that jurisdiction with only "de minimis" activity outside the jurisdiction.

ANALYSIS

At the outset, note that we can only provide advice as to the provisions of the Act and its regulations. We may also advise whether a local ordinance conflicts with the Act. (E.g., *In re Olson* (2001) No. O-01-112, *Cook* Advice Letter, No. I-09-108 and *Lowrie* Advice Letter, No. I-08-119.) However, Commission staff does not have the authority to opine on a requestor's duties under a local ordinance. (E.g., *Herrick* Advice Letter No. I-10-103, *Barisone* Advice Letter, No. I-01-201, and *Zundel* Advice Letter, No. I-94-111.)

You have not asked us to determine whether a particular local ordinance is preempted by the Political Reform Act because it imposes "additional or different" filing requirements applicable to committees outside its jurisdiction. Rather, you have asked us the general question of whether a city's or county's campaign rules apply to a general purpose committee defined under the Act and its regulations as a "city" or "county" committee. Our interpretation is that the local jurisdiction's campaign rules do apply to such a "city" or "county" general purpose committee, as discussed below.

I. Applicable Law

A. The Act Recognizes that there is an Interplay between State and Local Campaign Law. The campaign finance provisions of the Act recognize an interrelation with local campaign finance ordinances. Many provisions of the Act apply to both *state and local* candidates, including the campaign reporting requirements in Chapter 4, the one-bank account rule of Section 85201, the sender identification rules of Section 84305, the prohibitions on campaign money laundering in Section 85701 and the provisions governing the use of funds in Sections 89510-89518, to name a few. Other provisions of the Act apply only to candidates for *state* office, such as the contribution and expenditure limit statutes enacted by Proposition 34.

Under the Act, local jurisdictions are expressly permitted to enact local campaign finance rules as long as they do not conflict with the Act. Section 81013 provides as follows:

"Nothing in this title prevents the Legislature or any other state or local agency from imposing additional requirements on any person if the requirements do not prevent the person from complying with this title. If any act of the Legislature conflicts with the provisions of this title, this title shall prevail."

While state law contains no contribution limits for local elections, the Act specifically provides that cities and counties may adopt contribution limits applicable to elections in their jurisdiction. Section 85703(a) provides:

"(a) Nothing in this act shall nullify contribution limitations or prohibitions of any local jurisdiction that apply to elections for local elective office, except that these limitations and prohibitions may not conflict with the provisions of Section 85312 [concerning member communications]."

B. Section 81009.5. The Act also permits cities and counties to enact additional reporting requirements for elections in their jurisdiction. However, to prevent a committee from being subject to multiple overlapping campaign reporting requirements of several jurisdictions, Section 81009.5 was added to the Act, providing in part, as follows:

“(b) Notwithstanding Section 81013, no *local government agency* shall enact any ordinance imposing filing requirements additional to or different from those set forth in Chapter 4 (commencing with Section 84100) for *elections* held in its *jurisdiction* unless the additional or different filing requirements apply only to the *candidates* seeking *election* in that *jurisdiction*, their *controlled committees* or *committees formed or existing primarily* to support or oppose their candidacies, and to *committees formed or existing primarily* to support or oppose a candidate or to support or oppose the qualification of, or passage of, a local ballot *measure* which is being voted on only in that *jurisdiction*, and to *city or county general purpose committees* active only in that *city or county*, respectively.” (Emphasis added.)

Section 81009.5(b) uses many terms contained in the Act’s definitional section in Chapter 2. (Sections 82000-82055.) The defined terms that this section uses are italicized in the passage above and listed below:

- “Local government agency” - defined in Section 82041
- “Election” - defined in Section 82022
- “Candidate” - defined in Section 82007
- “Jurisdiction” - defined in Section 82035
- “Committee” - defined in Section 82013
- “Controlled committee” - defined in Section 82016 and Regulation 18217
- “Measure” - defined in Section 82043
- “Primarily formed committee” - defined in Section 82047.5 and Regulation 18247.5
- “City” - defined in Section 82008
- “County” - defined in Section 82017
- “General purpose committee” - defined in Section 82027.5 and Regulation 18227.5

Your letter argues that Regulation 18227.5 cannot apply to Section 81009.5 because the regulation as enacted by the FPPC only states that it interprets Section 82027.5 (in the body and reference section of the regulation) and it was not specifically referenced to apply to Section 81009.5. However, Regulation 18227.5 defining “city,” “county” and “state” “general purpose committees” is interpreting the statutory *definition* of “general purpose committee” in Section 82027.5 which applies throughout the Act.

Regulations interpreting definitional sections of the Act do not always specifically reference every other section that mentions the defined term. The term “primarily formed” committee appears 53 times throughout the Act and the definition of that term in Section 82047.5 and Regulation 18247.5 applies to those usages. Likewise, the term “general purpose” committee appears 21 times throughout the Act and the definitions of those terms in Section 82027.5 and Regulation 18227.5 apply to those usages.

C. Primarily Formed Committee. Pertinent to your letter, the Act defines a “primarily formed committee” in Section 82047.5 as follows:

“‘Primarily formed committee’ means a committee pursuant to subdivision (a) of Section 82013 which is formed or exists primarily to support or oppose any of the following:

- (a) A single candidate.
- (b) A single measure.
- (c) A group of specific candidates being voted upon in the same city, county, or multicounty election.
- (d) Two or more measures being voted upon in the same city, county, multicounty, or state election.”

Regulation 18247.5 further defines a “primarily formed committee” as one that makes more than 70 percent of its contributions and expenditures on a candidate or measure or group of candidates or measures on the same ballot as listed above. The *Moll* Advice Letter, No. A-97-080, said that “as a rule of thumb,” “a committee should be presumed to be a primarily formed committee if it makes 80 percent or more of its total contributions to and/or expenditures on behalf of a single candidate or measure, or a group of specific candidates or measures being voted upon in the same city, county, multicounty or state election.” Regulation 18247.5 essentially codified the “rule of thumb” for defining primarily formed committee contained in the *Moll* Letter, reducing the percentage from 80 to 70. The regulatory definition of “primarily formed committee” adopted by the Commission in 2009 superseded the definition of primarily formed committee contained in the *Moll* Advice Letter.

D. General Purpose Committee. Your question focuses on reporting by general purpose committees. The Act defines a “general purpose committee” in Section 82027.5 as follows:

“(a) ‘General purpose committee’ means all committees pursuant to subdivision (b) or (c) of Section 82013,² and any committee pursuant to subdivision (a) of Section 82013 which is formed or exists primarily to support or oppose more than one candidate or ballot measure, except as provided in Section 82047.5.

(b) A ‘state general purpose committee’ is a political party committee, as defined in Section 85205, or a committee to support or oppose candidates or measures voted on in a state election, or in more than one county.

² Section 82013 describes three types of committees that are required to file campaign reports under the Act: under subdivision (a), a “recipient committee” is one that receives contributions of \$1,000 or more in a calendar year from others for political purposes (this includes a candidate’s own committee, a PAC, etc.); under subdivision (b) are individuals and entities that make independent expenditures totaling \$1,000 or more in a calendar year; and under subdivision (c) are “major donors” who make contributions totaling \$10,000 or more in a calendar year to California candidates or committees.

(c) A ‘county general purpose committee’ is a committee to support or oppose candidates or measures voted on in only one county, or in more than one jurisdiction within one county.

(d) A ‘city general purpose committee’ is a committee to support or oppose candidates or measures voted on in only one city.”

Regulation 18227.5 further defines a “city” or “county” general purpose committee as one that makes 70 percent or more of its total contributions and expenditures within a particular local jurisdiction, and considers all others to be “state committees.” Regulation 18227.5 provides in part as follows:

“(c) State, County or City. Under this regulation a committee is considered a state committee unless it qualifies as a city or county committee. To determine whether a general purpose committee is a state, county or city committee under Section 82027.5, the following definitions apply:

(1) City General Purpose Committee. A “city general purpose committee” is a committee that makes more than 70 percent of its contributions or expenditures to support or oppose candidates or measures voted on in only one city, or in one consolidated city and county, including contributions to city general purpose committees in the same city or the same consolidated city and county.

(2) County General Purpose Committee. A “county general purpose committee” is a committee that makes more than 70 percent of its contributions or expenditures to support or oppose candidates or measures voted on in only one county, or in more than one jurisdiction within one county, including contributions to county general purpose committees in the same county.

(3) State General Purpose Committee. A “state general purpose committee” is a committee that meets the criteria in subparagraph (c)(3)(A), (c)(3)(B) or (c)(3)(C):

(A) The committee makes contributions or expenditures to support or oppose candidates or measures voted on in state elections, including making contributions to other state general purpose committees, or in more than one county, and does not meet the criteria for a city or a county committee set forth in subdivisions (c)(1) or (c)(2) above”

E. The *Moll* Advice Letter. In the *Moll* Advice Letter, No. A-97-080, the San Francisco Ethics Commission, asked about the limits of the City and County’s authority under Section 81009.5 to transfer filing officer responsibilities from the City and County Clerks in San Francisco to the Ethics Commission for those candidates and committees described in that statute. (San Francisco is a consolidated city and county.) The *Moll* Advice letter found that the City and County was permitted under the Act to designate the filing officer for city and county candidates and committees as the San Francisco Ethics Commission.

Staff advice in the 1997 *Moll* Letter was that a committee was considered a “city” or “county” general purpose committee if 100 percent of its activity was in that jurisdiction (and none or a de minimis amount of activity was outside the city or county). However, regulations defining primarily formed committee in 18247.5 and general purpose committee in 18227.5 were

expressly adopted by the Commission to correct and supersede the *Moll* letter's advice. Regulations 18227.5 and 18247.5 now set the standard for when a committee is a city, county, or state committee, and when a committee is "primarily formed" for a candidate or measure. With the adoption of the new regulations defining what constitutes a city, county or state general purpose committee under Section 82027.5, the "100 percent" standard of the *Moll* letter is no longer defensible as a competing interpretation of the Act. Commission advice letters are the application of the Act and Commission regulations to a specific transaction or activity specified by a requestor. The analysis or conclusions in an advice letter may be (as here) abrogated by subsequent developments in the law, including, but not limited to, statutes, regulations, and case law.

II. The Commission's Authority to Interpret the Act

The Commission has "primary responsibility for the impartial, effective administration and implementation" of the Act. (Section 83111.) The Commission's authority to interpret the Act includes the express power to "adopt, amend and rescind rules and regulations to carry out the purposes and provisions" of the Act, provided such regulations are consistent with the Act and other applicable law. (Section 83112.)

In interpreting the Act, the Commission looks to the plain meaning of the statute and its legislative history, applying reason and common sense to interpret the statute in a manner that most fully effectuates its purpose. (See, e.g., *Halbert's Lumber, Inc. v. Lucky Stores, Inc.*, 6 Cal.App.4th 1233, 1238-1239 (1992).) We begin by examining the statutory language giving the words their usual and ordinary meaning, viewed in the context of the statute as a whole and the overall statutory scheme. *Citizens to Save California v. California Fair Political Practices Com.*, 145 Cal. App. 4th 736, 746-748 (Cal. App. 3d Dist. 2006),³ citing *People v. Rizzo* (2000) 22 Cal. 4th 681, 685. Ordinarily, rules of statutory interpretation require that different sections of a code must be read together and that code provisions relating to the same subject must be harmonized to the extent possible. (*Kern County Employees' Retirement Assn. v. Bellino*, 126 Cal. App. 4th 781, 788 (Cal. App. 5th Dist. 2005).

The Commission's authority to effectuate the purposes of the Act through regulations and to avoid a wooden literalism that would subvert those purposes has been upheld in *Californians for Political Reform v. Fair Political Practices Commission*, 61 Cal.App.4th 472 (1998) (upholding administrative overhead exception to regulatory definition of "contribution"); *Watson v. Fair Political Practices Commission*, 217 Cal.App.3d 1059 (1990) (upholding Regulation 18901 interpreting Section 89001's statutory prohibition on newsletters and other mass mailings at public expense); and *Consumers Union v. California Milk Producers Advisory Bd.*, 82 Cal.App.3d 433 (1978) (upholding regulation 18707.4 [then 18703] creating a narrow

³ In *Citizens to Save California vs. California Fair Political Practices Commission* (2006) 145 Cal.App.4th 736, the court enjoined the FPPC from administering or enforcing Regulation 18530.9, a regulation that imposed on a state candidate controlled ballot measure committee the contribution limit applicable to the candidate. The court found that the regulation lacked statutory authority.

exception from disqualification for members of boards or commissions, who by law, are required to come from the industry that the board or commission regulates).

In these cases, the courts have given deference to the Commission's administrative interpretation of the Act. In *Californians for Political Reform, supra*, the court stated that "because of the agency's expertise, its view of a statute or regulation it enforces is entitled to great weight unless clearly erroneous or unauthorized." (*Id.* at 484.) The court further stated that "where the regulation at issue is one deemed necessary to effectuate the purposes of the statute, we apply a more deferential standard of review, requiring only that the regulation be reasonable." (*Id.* at 484.)

The *Watson* case involved a 12-word statute added to the Act by Proposition 73 in June 1988 to restrict incumbent legislators from sending out newsletters to constituents at public expense. Section 89001 stated succinctly, "No newsletter or other mass mailing shall be sent at public expense." State senators sued challenging the statute's constitutionality. Construed literally, this statute could have been a total ban on mass mailings including legal notices, tax bills, sample ballots and college catalogs. The FPPC interpreted the statute with Regulation 18901, permitting elected officials to send items on letterhead, press releases, items sent in the normal course of government business, intra-agency communications, items sent in connection with the collection or payment of funds by the agency such as tax bills and checks, legal notices, etc. The Court of Appeal held that the statute did not interfere with the Legislature's authority to govern its internal affairs and that there was no constitutional right to send newsletters and other mass mailings at public expense. As to the Regulation 18901, the Court found that:

"[R]egulation 18901, promulgated by the FPPC . . . clarifies any ambiguity that may exist in the practical application of the statute. Such regulations are deemed valid so long as they are 'consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.' (*Consumer Union of U.S., Inc. v. California Milk Producers Advisory Bd.* (1978), 82 Cal.App.3d 433, 447.) . . . We agree with the FPPC that the effect of regulation 18901 is to permit the free flow of necessary government information while reducing the political benefit realized by incumbent elected officials from the sending of newsletters and other such mass mailings. This is totally consistent with the FPPC's duty to implement the intent and not the *literal language* of the statute." *Watson, supra*, at 1077.

Similarly here, it is the FPPC's duty to interpret Section 81009.5 in a manner that is consistent with the rest of the Act and that best effectuates the Act's purposes. The interpretation finding that a "city" general purpose committee files reports with the city and *is also subject to that city's reporting rules* reads the provisions of the Act in a consistent manner and effectuates Section 89001.5(b)'s proviso giving a local jurisdiction authority over general purpose committees active in that jurisdiction, such as a city chamber of commerce.

III. The definitions of “City,” “County” and “State” Committee adopted in Regulation 18227.5 apply throughout the Act, including to Section 81009.5

A. Plain Meaning.

Your letter argues that Regulation 18227.5’s definition of “city” or “county” general purpose committee does not apply to Section 81009.5, because the plain meaning of that section, which states that a city or county can enact extra filing rules applicable to a committee “active only” in that jurisdiction, should be interpreted to mean the committee must have 100 percent of its activity in that jurisdiction. The position you advance is a reading of Section 81009.5 which was, in fact, the interpretation offered in the *Moll* Letter. However, the Commission adopted Regulation 18247.5 which defines a “city” or “county” general purpose committee as one that makes more than 70 percent of its contributions in a particular city or county. It is reasonable to conclude that the new definition of “city” or “county” general purpose committee applies throughout the Act and that a city or county’s campaign filing rules *do apply* to a city or county general purpose committee qualifying under Regulation 18227.5 in that jurisdiction.

Adherence to the strict “view” of the *Moll* Letter would enable any committee to evade local filing rules merely by making several contributions to a committee outside the jurisdiction. Such an interpretation would empty all practical meaning from the proviso at Section 81009.5(b) that begins with the significant word “unless” with respect to general purpose committees. In fact, one of the main reasons the FPPC sought to define “city,” “county” and “state” general purpose committees was to prevent a committee’s evasion of local rules, as discussed below.

B. Legislative History and Public Policy.

Your letter further argues that the public policy objectives of Section 81009.5 would be thwarted if Regulation 18227.5 is interpreted to govern its meaning. As discussed above, Section 81009.5 was enacted so that a committee is not subject to multiple overlapping filing requirements from various jurisdictions. However, interpreting Regulation 18227.5’s definitions of city and county general purpose committee in light of Section 81009.5 does not thwart the policy objectives of the statute. Under the Commission’s definitions in 18227.5, a committee only qualifies as active in *one* particular jurisdiction. Under the regulation, a committee is *either* a “state” committee, a “county” committee or a “city” committee. It is subject to filing with and under the rules of only one jurisdiction.

Classification as a “city” or “county” general purpose committee under 18227.5 does not subject a committee to the specter of being subject to the additional or different report filing rules of several jurisdictions. Under the new definition of state, county and city committee in 18227.5, a committee is a county or city committee if 70 percent of its contributions or expenditures are in one county or one city, otherwise it is a state committee. This sets a quantifiable rule for when a committee is subject to a city’s rules and files with that city. If the decision is left up to their discretion, committees can strategically pick the jurisdiction with the least regulation. For example, a committee might choose to be an Alameda county committee, rather than a highly-regulated City of Berkeley committee.

The FPPC conducted rulemaking proceedings to define “general purpose committee” for two main reasons. One reason was to clarify where committees file. A second reason was because the Enforcement and Legal Divisions had noticed that a few committees were evading local jurisdictions’ lower contribution limits or reporting rules by making contributions outside the jurisdiction and then claiming they were not a local committee.

Under the interpretation you advance, any committee that prefers not to abide by a city’s local campaign rules could easily skirt them by making a contribution outside the jurisdiction and claiming it is not 100 percent active in the city and therefore not subject to the city’s rules. A general purpose committee could quite cheaply “pick” its jurisdiction. This was the defect with the standard set forth in the *Moll* advice letter, and is the reason the FPPC worked over two years to supersede the “100 percent of activity/de minimis” advice in that letter.

Further, the interpretation you advance sets up a complicated regime where a committee could be a city committee for purposes of filing location, but would not be a city committee for purposes of following the city’s campaign rules. Under this system, how would the local filing officer, who requires committees to comply with the city’s rules, know which city general purpose committees are just filing with the city and which ones are filing with the city and also subject to its rules? The San Francisco Ethics Commission, San Jose Ethics Office, and Contra Costa County would be surprised, to say the least, to hear that their campaign ordinances do not apply to a committee that qualifies under the Act’s definitions as a “city” committee in San Francisco or San Jose, or as a “county” committee in Contra Costa County.

IV. Administrative Procedure

You next argue that Regulation 18227.5 cannot apply to Section 81009.5 as a matter of administrative procedure. We noted above that the regulation is not specifically attached to Section 89001.5, because it is a definitional regulation applicable throughout the Act. You state that for the regulation to apply to Section 81009.5 more public notice and hearings would be required. However, Regulation 18227.5 was validly adopted through extensive public rulemaking. It was evident from the rulemaking history and recordings of four Commission meetings that the regulation affected which jurisdiction’s rules apply to a general purpose committee as well as where to file.

A. The Commission Undertook Extensive Public Rulemaking to define “General Purpose Committee” and “Primarily Formed Committee.”

The Commission’s rulemaking to define “city,” “county” or “state” “general purpose committees” and “primarily formed committees” spanned four years. The regulations were sent out for public notice three times, were the subject of intensive public debate, and were considered at four Commission hearings and two interested persons meetings.

Below is a chronology of the Commission’s rulemaking on this issue:

- **Memorandum** to Commission dated September 30, 2008, titled “Prenotice Discussion of Adoption of Regulations: 18227.5 – General Purpose Committees: State, County and

City; 18247.5 – Primarily Formed Committee.

<http://www.fppc.ca.gov/agenda.php?id=413>

- **Commission meeting** on October 16, 2008. The Commission held a pre-notice discussion of Regulations 18227.5 – defining General Purpose Committees: State, County and City; and Regulation 18247.5 – defining Primarily Formed Committee. (Item 11 on the agenda.) A pre-notice discussion is designed to present the regulations in concept and draft language form for the public and Commissioners to comment on in advance of the adoption hearing. <http://www.fppc.ca.gov/agenda.php?id=413>
- **Memorandum** to Commission dated December 26, 2008, titled “Adoption of Regulation 18247.5 – Primarily Formed and General Purpose Committees.”
<http://www.fppc.ca.gov/agenda.php?id=421>
- **Commission meeting** on January 15, 2009. The Commission discussed, took public comment, and adopted Regulation 18247.5, clarifying the statutory definitions of primarily formed and general purpose committees. (Item 15 on agenda.) There were comment letters representing two local jurisdictions, from John St. Croix, Executive Director of the San Francisco Ethics Commission and Lee Ann M. Pelham, Executive Director of the Los Angeles City Ethics Commission. The meeting agenda, regulations and comment letters are available here: <http://www.fppc.ca.gov/agenda.php?id=421>
- **Interested persons meeting** held April 13, 2010, on primarily formed and general purpose committees, Regulation 18247.5. The interested persons meeting agenda is available: <http://www.fppc.ca.gov/index.php?id=450>
- **Memorandum** to Commission dated May 24, 2010, titled “Repeal of Regulation 18247.5; Readoption of Regulation 18247.5 – Primarily Formed Committees; and Adoption of Regulation 18227.5 – General Purpose Committees – State, County or City.”
<http://www.fppc.ca.gov/agenda.php?id=442>
- **Commission meeting** on June 10, 2010. Commission considered revised regulations. The proposed regulations were item 24 on the agenda. There were comment letters from three election law practitioners, Laurence Zackson, James Sutton, and Betty Ann Downing. The meeting agenda, regulations and comment letters are available here: <http://www.fppc.ca.gov/agenda.php?id=442>
- **Interested Persons Meeting** held October 26, 2011, about revisions to the rule defining general purpose committees and primarily formed committees. The interested persons meeting agenda and proposed regulations are available on the FPPC website here: <http://www.fppc.ca.gov/index.php?id=450>.
- **Memorandum** to Commission dated November 28, 2011, titled “Repeal of Regulation 18247.5; Readoption of Regulation 18247.5 – Primarily Formed Committees; and Adoption of Regulation 18227.5 – General Purpose Committees – State, County or City.”
<http://www.fppc.ca.gov/agenda.php?id=467>

- **Commission Meeting** on December 8, 2011. The Commission adopted revised Regulation 18227.5 defining “general purpose committees” and repealed and readopted Regulation 18247.5 defining “primarily formed committee.” (Item 25 on the agenda.) There were comment letters from Stacey Fulhorst and Stephen Ross of the San Diego Ethics Commission, Richard Rios of Olson, Hagel and Fishburn LLP, Heather Holt of the Los Angeles City Ethics Commission, Phillip Ung of Common Cause, and Betty Ann Downing of California Political Law, Inc. The meeting agenda, regulations and comment letters are available here: <http://www.fppc.ca.gov/agenda.php?id=467>

B. It Was Clear During the Process of Adopting Regulations Defining “General Purpose Committee” that the Definition Would Govern Which Committees are Subject to Local Campaign Rules.

During hearings concerning the adoption of regulations defining “general purpose committee,” it was clear that the regulation would affect the universe of committees to which a local jurisdiction’s rules apply and for which a local jurisdiction acts as filing officer. This is evident in public comment letters on the regulations submitted by local jurisdictions, a memorandum to the Commission and transcripts of Commission meetings.

(i) Comments from Local Jurisdictions.

A number of local jurisdictions sent comment letters during the consideration and adoption of these regulations. The City of Temecula, the San Francisco Ethics Commission, the City of San Diego, and the Los Angeles City Ethics Commission submitted comment letters. Three of these letters basically supported having a clearer rule for what constitutes a “state,” “county” or “city” committee and commented on specific provisions of the proposed regulations. The letter from the Los Angeles City Ethics Commission, in contrast, voiced “philosophical and categorical” opposition to the regulations because of their possible effects on which committees are subject to local rules. Los Angeles City Ethics was concerned that “[a]t best, the proposed rule creates confusion regarding whether a committee must comply with city election laws; and at worst, it attempts to eliminate a committee’s responsibility under local law.”

(ii) Memorandum to Commission.

Discussing why a regulation defining “city” committee was needed, the November 28, 2011 memorandum to the Commission on Regulation 18227.5 gives the example of committees which are active in cities but are not following city campaign rules:

“The Commission’s Enforcement Division believes a regulation is needed to provide guidance in this area. . . . In addition, the head of the City of San Diego’s Ethics Commission has stated that having a rule is very helpful for them, because committees can figure out whether they are supposed to file with the City of San Diego. She said before the rule, many committees active in the city would file as county committees to avoid the city’s electronic disclosure and campaign finance laws.”³

³A similar situation was addressed in two FPPC staff advice letters which concluded that the Berkeley Chamber of Commerce PAC was a city PAC that should be filing with the city of Berkeley, rather than filing with the county of Alameda, because virtually all its \$124,500 in expenditures (except for a \$500 contribution to a state candidate) were made to campaigns for city-only candidates or measures. (*Mikesell* Advice Letter, No. A-07-183 available at: <http://www.fppc.ca.gov/adv/Advice%20Letters/2007/07183.doc> and *Van Herick* Advice Letter, No. I-07-097.) The city of Berkeley's campaign filing laws are more stringent than the county, requiring public disclosure of contributions at \$50 rather than \$100, and providing disclosure on the Internet of the names of all contributors of \$50 or more."

(iii) Transcripts of Commission Hearings.

The impact the regulations defining "city" and "county" general purpose committee would have on determining which committees follow local campaign laws was discussed at three of the four Commission meetings where the regulations were considered.

Excerpt from October 16, 2008 Commission meeting where the regulation was presented for pre-notice discussion:

"Staff Counsel Wagner: But the current rule, the current advice under the *Moll* letter is a city committee that is spending a lot of money in a city and makes anything other than a de minimis contribution to a State Assembly member's district is a state committee. So this [the proposed regulation] keeps it more at the city level than that one did.

Commissioner Leidigh: No, I understand that. I understand, it used to be you had to be basically 100 percent pure in only one jurisdiction to be a local, and if you did anything, then you got moved up. And I think that avoided some disclosure at the local level that would have been good. So I like generally the approach.

Chairman Ross Johnson: Okay, further comments, questions from members of the Commission?"

Excerpt from January 15, 2009 Commission meeting where the initial version of the regulation was adopted:

"Commissioner Leidigh: So a committee can say that we spent a little money on a state candidate election, therefore we're now a state committee and we don't have to play by your rules, Los Angeles, right?

Staff Counsel Wagner: Right.

Leidigh: I mean, assuming somebody wants to do that.

Wagner: Technical Assistance gets that question all the time. They say, 'Hey if I make this contribution to the state am I out of the City of Berkeley's contribution limits, am I out of their rules?' You know, we get that type of question.

Leidigh: Okay, so what we've been endeavoring to do as you've worked up this regulation is to try to provide more clarity, more of a bright line, and actually at the fifty percent threshold, given what the existing state of the law is, it actually gives them more than what they arguably have under existing law.

Wagner: That's correct.

Leidigh: The difference is because of the clarity, it might also embolden some committees to say, without calling Technical Assistance, 'Ah, we spent more than 50 percent on state, or county, or whatever it is, therefore, we're not subject to your rules.' So go back a moment again to 81009.5, I think that was the citation you gave, unfortunately I don't have a copy in front of me. As you described it, it talked about those who are active or participating, I think was the word you used, in local elections within a particular jurisdiction, that locals can impose additional requirements beyond the Political Reform Act requirements under those circumstances. And so, I guess what I'm trying to figure out is why that isn't enough to satisfy their concern. In other words, I'm trying to figure out why we're having this debate, why there is this issue. Let's say a committee was always a state committee, it started out a state committee and had gone on for years as a state committee. And now all of a sudden they get excited about something going on in a local jurisdiction, let's say Los Angeles. Let's say they were a big backer of Speaker Villaraigosa when he was here in Sacramento and now he's running for Mayor and so they want to support him. So then they start doing some activity in the City of Los Angeles. What about 81009.5 either under existing law or under this regulation wouldn't operate to say they have to play by those rules as well, I mean that's what I'm trying to figure out.

Wagner: Well, the committees currently do play by those rules, they file the extra reports under existing law, you know, and existing 81009.5 as it's worded just says -- it's written kind of in the negative -- no local government agency can enact any ordinance imposing filing requirements additional to or different from those in Chapter 4 for elections in its jurisdiction unless the additional or different requirements only apply to candidates seeking election in the jurisdiction, their controlled committees or committees primarily formed to support or oppose their candidacies or to committees formed or existing to support or oppose . . . and to city and county general purpose committees active only in that jurisdiction respectively .

Leidigh: Okay, so that word 'only.'

Wagner: Right, for general purpose committees.

Leidigh: If you were active only, why would you be a county [committee] -- you're talking about if it is a county rule, an Orange County rule.

Wagner: Right if it's a county rule, it can apply only to committees active in that county, technically under 81009.5.

Leidigh: So their concern is that if under this regulation, someone is now denominated a state committee and is therefore not active only then they can say you can't impose all these extra things on us and so we're going to ignore them.

Wagner: Right, the vagueness, the current vagueness works a little bit to their advantage, I guess. That's their position.

Leidigh: Alright, but the fundamental area of concern is this word only.

Wagner: Correct.

Leidigh: If you were doing some state stuff under the current state of the law then you wouldn't be only --

HW: Right, their philosophical objection is really with the law --

Leidigh: With the overall scheme.

Wagner: Yes, with the overall scheme, which this regulation brings into clearer relief. . . ."

Excerpt from June 10, 2010 meeting:

"Commissioner Rotunda: Why do we care? You said some committees might give a nominal amount to a county committee or a city committee to an outside person so they could be called a state committee. Why do we care? Why is it all that important? It would seem to me that at the Secretary of State's office it would be easier to get at instead of deciding which room in which courthouse.

Wagner: Right, that's a tension. It's more visible; at the same time there are other requirements of the Act, such as only a city committee has to file city preelection reports. So if you don't want to file those, you know it's a hassle to file those, you'd rather be a state filer. And the cities want to get the preelection reports in before their election. Also, you know, logically if you're mostly active in that city, maybe where they're going to look for you is at LA Ethics under the current system.

Rotunda: Maybe this is a problem with the statute, but it seems to me as long as they're filing whether they file with the Secretary of State which should be easier to get at as a central thing, rather than the particular city, they still have to file. I just wonder if we're too worried about what they call themselves as long as they end up meeting the requirements at least on the state level with the Secretary of

State. . . . Let's say we made it very easy to be called a state committee, by regulation and you file with the Secretary of State and that is online. Why don't we just make it easy for everyone to qualify as a state committee?

Wagner: That's true, a lot of the cities and counties, 500 cities, most of them have local ordinances that cover campaign finance. Those local rules cover committees that are in their jurisdiction so this [regulation] does affect that a bit. They have to follow local rules if they're a city committee.

Executive Director Porter: There are also inherent tensions within the Political Reform Act relative to the locals being able to exert their local control relative to when things are filed, how they're filed. I don't want to impugn any committees. We're going to presume that nobody actively does this but there is a concern with depending upon how the scheme is set up it's easier to game it with pushing on some disclosure on the state side so you don't have to comply with the local rules depending upon where your activity is. There are just a variety of different concerns that we're looking at that I think are best addressed through legislation, but again, staff is attempting to do the best it can with what we have before us.

Chairman Schnur: Commissioner Garrett.

Garrett: I just want to understand that a little bit more because I have to say I was thinking along the same lines as Commissioner Rotunda, it might be a good thing to have people all be at the state level, so let me just understand what you're both trying to say. One way to understand your comments is that there is kind of a jurisdictional jealousy. Cities like having city committees, counties like having county committees and states like having state committees. I'm not sure I'm terribly interested in that. There's another possibility though that you're saying which is there are specific city ordinances beyond just disclosure, but including disclosure that are specific to city committees, same with counties, and that avoiding those restrictions and regulatory systems have deleterious effects that are more serious than the possibility that there's not online disclosure because they're a city committee. In other words we're weighing, we're doing a kind of cost-benefit analysis. If they're state committees, we get online disclosure, that's really good, we like that, we like lots of people to be state committees. On the other hand, there's a city regulatory structure which has additional benefits that would be evaded or lost if we have more and more going to the state level. Which of those are you saying?

Porter: You are correct. That is a possibility -- that by shifting the burden of where you report there will be issues relative to what you file on the local basis. I would suspect that the local jurisdictions would suggest that individuals would have a requirement to abide by those rules no matter what, because there are those rules but the individuals would then argue that no, we're a state committee.

. . .

Commissioner Hodson: I think the discussion also needs to take into account the 535 plus cities, I'm not sure if a majority have their own ethics laws, but we're not talking about just the City of Los Angeles or City of San Francisco. A citizen in Atwater will logically think that, you know, if I want to look at what's going on in Atwater, that I'll go to Atwater, and not necessarily think, oh, wait a minute, I can go online with the Secretary of State. . . .

4. . .

Garrett: . . . I need to understand what important turns on this [whether you are a state or city committee].

Wagner: I think, I mean there is this section of the Act, 81009.5, saying that the locals can write rules and that the rules can only apply to those committees that are active only in their jurisdiction.

Garrett: But can we define active differently and do cities define active differently for that part of the code rather than this part, that's possible.

Wagner: You know, I haven't seen that in their ordinances . . .

. . .

Jim Sutton: Jim Sutton with the Sutton law firm in San Francisco. . . . I want to respond to Commissioner Garrett's question about local laws and when you have to comply. A part of that question is complicated but most of it really isn't which is when it comes to any restrictions that city law imposes, any limitations on fundraising, any disclaimers that are required on mail pieces. Any types of restrictions, it doesn't matter whether you're a state city or county PAC, it's the activity that matters. If you spend, if you put out a mail piece supporting a city candidate, you have to put a big old disclaimer on it under city law. The only even question is about additional reporting requirements. Because the Act does say that a city can only impose its additional reporting requirements on a state or county committee if that committee is active only in the jurisdiction. But that language, active only, there's really no wiggle room there. So we would even say it's not actually all that complicated, really they can't unless the PAC is active only in that jurisdiction. I don't know this but I would have presumed that staff would have already contacted a lot of the ethics commissions, you know, when they're drafting the regulation. But it is very important that our clients who have been or will be county or state PACs, if they do something in that city, they're complying with all the restrictions, all the prohibitions, all the disclaimer rules in that city. So that is just an initial comment."

These excerpts from Commission hearings show that the interplay with Section 81009.5 and the issue of when a local jurisdiction's rules apply to committees was discussed during the consideration of Regulation 18227.5 defining "city" "county" and "state" general purpose committee.

V. Conclusion

We conclude that a local jurisdiction's campaign rules do apply to a committee that qualifies as a "city" or "county" committee under Regulation 18227.5. We reach this conclusion because the Commission's authority to interpret the Act through regulations includes the ability to harmonize the Act's various provisions. The Commission had authority to adopt Regulation 18227.5, and the regulation defines the terms "city" "county" and "state" general purpose committee throughout the Act. The rule is a reasonable exercise of the Commission's authority, consistent with the Act and its purposes.

Further, the legislative intent and rationale behind Section 81009.5, to prevent a committee from being subject to additional or different filing requirements from multiple local jurisdictions, is not controverted by the conclusion that a "city" general purpose committee is subject to the city's campaign ordinance. The definitions of general purpose committee in Section 82027.5 and Regulation 18227.5 provide guidance in determining the *one* jurisdiction where the committee's activity is located and accordingly, where the committee should file reports and abide by the jurisdiction's campaign ordinance.

In addition, from a policy perspective, the conclusion that a general purpose committee that meets the definition of "city" committee under the Act and regulations is subject to the city's campaign ordinance is preferable to finding it is not subject to the city's rules. Under your proposed interpretation, a local general purpose committee, such as a city chamber of commerce committee, could make a nominal contribution outside the city and avoid being subject to that city's validly enacted campaign laws.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Hyla P. Wagner
Senior Counsel, Legal Division

HPW:jgl